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Person To Contact:

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Date:

January 26, 2009

TYs:

Legend

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Trust 1 =

Trust 2 =

State A =

A =

Accounting Firm X =

Bank Y =

FC1 =

FC2 =

FC3 =

FC4 =

FC5 =

FC6 =
FC7 =
FC8 =
FC9 =

Date A =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =

Dear :

This is in response to a letter received by our office on January 14, 2008, submitted on behalf of Fund 1, Fund 2, Fund 3, Fund 4, Fund 5, and Fund 6 (collectively, the "Funds") by the Funds' authorized representative, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a mark to market election under section 1296 of the Internal Revenue Code ("Code"). The Funds also request an extension of time under §§ 301.9100-1 and 301.9100-3 to make an election under section 855(a) of the Code with respect to each taxable year in which any income is recognized as a result of the mark to market elections.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

Trust 1 was organized as a State A trust that was registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., as amended (the 1940 Act) as an open-end management company under the Investment Company Act of 1940, as amended, at all times during the years at issue and is so registered currently. With regard to Funds 1 through 4, each is a duly designated and established segregated portfolio of assets of Trust 1 and is a "fund" as defined in section 851(g)(2) of the Code, and accordingly is treated as a separate corporation for federal tax purposes pursuant

to section 851(g)(1) (except with respect to the definitional requirement of section 851(a)).

Trust 2 also was organized as a State A trust that was registered as an open-end management company under the 1940 Act at all times during the years at issue and is so registered currently. With regard to Funds 5 and 6, each is a duly designated and established segregated portfolio of assets of Trust 2 and is a “fund” as defined in section 851(g)(2), and accordingly is treated as a separate corporation for federal tax purposes pursuant to section 851(g)(1) (except with respect to the definitional requirement of section 851(a)).

Each Fund is taxed as a regulated investment company (“RIC”) under Subchapter M of the Code.

A is the investment manager of the Funds. As the investment manager and provider of administrative services, A is responsible for, among other things, assisting the preparation of Trust 1’s and Trust 2’s filings required to maintain the Funds’ qualification, and to meet tax requirement applicable to them, under federal and state tax laws. Accounting Firm X served as the auditor, reviewer, and signer of federal and state income and excise tax returns for the Funds. Bank Y prepared the tax returns for the RICs, including the Funds, managed by A.

On or around Date 6, Accounting Firm X discovered that FC8 was a PFIC and immediately informed A that a mark to market election under section 1296 was not made for Fund 4 and Fund 6 with respect to their holdings in FC8. Thereafter, A implemented a new, more comprehensive PFIC identification process for all of its funds. As a result, Accounting Firm X identified more of A’s funds with holdings in PFICs. Specifically, Fund 1 holds stock in FC1, FC2, and FC3; Fund 2 and Fund 3 hold stock in FC4, FC5, FC6, and FC7; Fund 4 holds stock in FC8; Fund 5 holds stock in FC4, FC5, FC6, FC7, and FC9; and Fund 6 holds stock in FC8.

For the years at issue, the Funds relied on A, Accounting Firm X, and Bank Y for tax advice. A failed to identify FC1 through FC9 as PFICs and failed to advise the Funds of the possibility of making, or the consequences of failing to make, a QEF election with respect to FC1 through FC9. A also failed to make the mark to market election under section 1296 for the Funds and failed to advise the Funds of the consequences of making or failing to make such an election.

Although the amount of dividends deducted on each Fund’s federal income tax returns for the years at issue (as filed) does not take into account any increased income that might result from making a mark to market election pursuant to the requested relief (“increased income”), each Fund represents that the declaration and distribution requirements of section 855(a) of the Code have been satisfied with respect to the increased income as follows. Each Fund paid substantial dividends in December of

each year at issue (the “December dividends”). In the case of each Fund that is a series of Trust 1, each of which has a taxable year that ends on Date A, the December dividend included (1) an amount determined to be necessary under section 855 to eliminate any investment company taxable income (“ICTI”) and net capital gain (“NCG”) for the previous taxable year (“spillback dividend”), and (2) the amount of ordinary income and capital gain net income for the post-Date A period needed to eliminate any liability for the excise tax under section 4982 of the Code. Similarly, (a) Fund 5 made December dividends that consisted of a combination of a spillback dividend and an amount intended to eliminate any liability under section 4982 for the current calendar year and (b) Fund 6, which was not subject to section 4982, made a spillback dividend in December. (The amounts distributed to eliminate ICTI and NCG and excise tax liability so determined all were reflected on the Funds’ Forms 1120-RIC and 8613 as filed and did not take into account any increased income.) Each Fund (other than Fund 6) represents that, to offset any increased income, it will utilize the portion of its December dividends originally intended to eliminate its excise tax liability as a spillback dividend. To the extent that any Fund has additional excise tax liability under section 4982 as a result of any increased income, that Fund represents that it will satisfy that liability.

Because the Funds were not aware of any potential undistributed increased income from a mark to market election, however, the Funds did not make the election under section 855 with respect to the increased income.

A has submitted affidavits from A’s Treasurer and Principal Accounting Officer and Accounting Firm X in support of this ruling request.

A, on behalf of the Funds, has made the following additional representations for each election:

1. The request for relief was filed by the Funds before the failure to make the regulatory election was discovered by the IRS.
2. Granting the relief will not result in the Funds having a lower tax liability in the aggregate for all years to which the regulatory election applies than that the Funds would have had if the election had been made timely (taking into account the time value of money).
3. The Funds did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the Funds requested relief and the new position requires or permits a regulatory election for which relief is requested.

4. Being fully informed of the required regulatory election and related tax consequences, the Funds did not choose to not file the election.

Law

Section 855(a) of the Code provides, in part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a tax year (including the period of any extension of time granted for filing such return), and distributes the amount of the dividend to shareholders in the 12-month period following the close of such tax year and not later than the date of the first regular dividend payment made after the declaration, the amount so declared and distributed shall, to the extent the RIC elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided otherwise by section 855.

Treas. Reg. §1.855-1(b)(1) provides that a section 855(a) election must be made in the return filed by the RIC for the taxable year. The election shall be made by the taxpayer by treating the dividend (or portion thereof) to which such election applies as a dividend paid during the taxable year in computing its investment company taxable income, or if the dividend (or portion thereof) to which such election applies is to be designated by the company as a capital gain dividend, in computing the amount of capital gain dividends paid during such taxable year.

Section 1296(a) provides that, in the case of marketable stock in a passive foreign investment company that is owned by a United States person at the close of any taxable year, the person may elect to include in gross income the excess of the fair market value of the stock over its adjusted basis.

Treas. Reg. §1.1296-1(h) provides that an election under section 1296 for a taxable year must be made on or before the due date (including extensions) of the person's U.S. income tax return for that year.

Treas. Reg. §301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. §301.9100-3, to make a regulatory election under all subtitles of the Code, except subtitles E, G, H, and I.

Treas. Reg. §301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. §301.9100-3(a) provides that requests for relief will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. §301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. §301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer

- (i) requests relief before the failure to make the regulatory election is discovered by the IRS;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; or
- (iv) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election.

Conclusion

Based on the facts and representations submitted, we conclude that the requirements are satisfied for granting a reasonable extension of time to make the election under section 1296 of the Code for the Funds. Accordingly, an extension of time to make the election under section 1296 is granted with respect to Fund 1's federal income tax return for taxable years ending Date 2 and Date 3; Fund 2's federal income tax return for taxable years ending Date 1, Date 2, and Date 3; Fund 3's federal income tax return for taxable years ending Date 2 and Date 3; Fund 4's federal income tax return for taxable year ending Date 2; Fund 5's federal income tax return for taxable years ending Date 4 and Date 5; Fund 6's federal income tax return for taxable year ending Date 4. Further, the requirements are satisfied for granting a reasonable extension of time to make the election under section 855(a) on the Funds' federal income tax returns for taxable years ending Date 2, Date 3, Date 4, and Date 5.

This ruling is limited to the timeliness of filing elections under sections 855(a) and section 1296. Except as specifically ruled upon herein, we express no opinion concerning any federal excise or income tax consequences relating to the facts herein under any other section of the Code. For example, we express no opinion as to whether the Funds, in fact, have satisfied all of the requirements of sections 855 and 1296 and the regulations thereunder. We also express no opinion as to whether the Funds qualify as RICs under subchapter M, part I, of Chapter 1 of the Code.

Further, no opinion is expressed as to whether the Funds' tax liability is not lower in the aggregate for the year to which the regulatory election applies than the Funds' tax liability would have been if the election had been timely made (taking into account the

time value of money). Upon audit of the federal income tax return involved, the district director's office will determine the Funds' tax liabilities for the years involved. If the district director's office determines any of the Funds' liabilities are lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to taxpayer's first representative.

Sincerely,

Ethan A. Atticks
Senior Technical Reviewer, Branch 2
(International)

cc: